IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

WP(C).No. 35904 of 2005(Y)

PETITIONER:

M.BALAN NAIR, AGED 53 YEARS,
S/O.GOVINDAN NAMBIAR, PROPRIETOR DHANYA HOTEL,
MODAKKALLUR, KOZHIKODE DISTRICT.

BY ADV. SRI.T.KRISHNAN UNNI
SRI.P.S.MURALI

RESPONDENTS:

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1. THE SECRETARY, KOYILANDY TALUK
COMMERCIAL EMPLOYEES UNION (CITU), KOYILANDYU,
KOZHIKODE DISTRICT.

2. THE INDUSTRIAL TRIBUNAL, KOZHIKODE.

BY ADV. SRI.B.V.JOY SANKER
GOVERNMENT PLEADER SRI. T.T. MUHAMMED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.35904 OF 2005

APPENDIX

EXT.P1: TRUE COPY OF AWARD DATED 14.10.2005 IN I.D.NO.10/2004 PASSED BY THE INDUSTRIAL TRIBUNAL, KOZHIKODE.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)No.35904 OF 2005

Dated this the 24th day of October, 2007

JUDGMENT

The management in I.D.No.10/04 is the petitioner herein. The petitioner is challenging Ext.P1 award of the Industrial Tribunal, Kozhikode in that industrial dispute. The issue referred for adjudication was;

> "Whether the alleged denial of employment to Sri. K.K. Chandran, worker with effect from 25.8.2002 is justifiable? If not what relief he is entitled to?".

2. The Labour Court after appreciating the evidence adduced before it, came to the conclusion that the workman involved was a workman employed by the petitioner, management and that the workman was unjustly denied employment with effect from 25.8.2002. However, instead of directing reinstatement, the Tribunal directed the management to pay compensation amounting to Rs.23,400/- to the workman involved. This award is under challenge before me.

3. The contention of the petitioner before me is that there is no reliable evidence adduced by the Union before the Industrial Tribunal for proving employment of the workman in question. According to the learned counsel for the petitioner, the Tribunal had merely found fault with the management for not producing the muster roll and wages register. He would submit that the management is a small time tea shop where it would not be practicable to maintain all those records. He would further submit that the onus of proving employment is on the workman which he has not discharged satisfactorily. On the above arguments of the learned counsel for the petitioner, would seek quashing of Ext.P1 award.

4. I have heard the learned counsel for the petitioner as also the learned counsel appearing for the 1st respondent Union.

5. It is settled law that the jurisdiction of this Court under Article 226 of the Constitution of India while dealing with the awards of Labour Courts and Industrial Tribunals are limited especially in the case of interfering with findings of fact entered by the Labour Court or Industrial Tribunal. It is also settled law that only if such findings are perverse or on the

basis of no evidence at all, this Court can interfere with such findings.

6. In this case there is no documentary evidence regarding the employment of the workman. The Secretary of the Union espousing the cause of the Workman deposed before the Tribunal to the effect that the workman was employed in the management establishment continuously for six years and he was denied employment with effect from 25.8.02. The workman also deposed on oath to that effect. The petitioner-management also gave oral evidence to the effect that the workman was not a workman employed by the management at all. As such, the Industrial Tribunal had to weigh the evidence of the Union and the workman on the one hand and that of the management on the other hand. The Tribunal had chosen to accept the evidence of the Union and the workman. The Tribunal had categorically stated in Ext.P1 award that inspite of rigorous cross examination, the management could not elicit any answers from the witnesses of the workman to discredit his evidence. On the other hand, the Tribunal relied on the fact that inspite of the petitioner deposing before the Tribunal that he has been properly maintaining employment and wage

records of his establishment, he has not cared to produce any muster roll or wages register or service records or any other documents in respect of even persons admitted to have been employed by him. I am of opinion that the fact that, after admitting that he is maintaining appropriate statutory records, the petitioner has not produced any of the same to show that the name of the workman is absent in the same, is a relevant fact to be considered while deciding the issue. The management has withheld relevant evidence from the Labour Court, which is certainly a circumstances which would tilt the scales in favour of the workman especially when the matter had to be decided on the basis of oral evidence alone.

In the above circumstances, I am unable to find that Ext.P1 award has been passed on perverse appreciation of evidence or that findings therein are not supported by any evidence at all. As such, I am not inclined to interfere with Ext.P1 award and accordingly the writ petition is dismissed

S. SIRI JAGAN, JUDGE

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